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Supreme Court of the United States

October Term, 1964

No. 454

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH GARVEY, PAUL ATKINS and NICHOLAS J. O'CONNELL, JR., ex officio,

Petitioners,

against

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

This reply is submitted on behalf of petitioners Nicholas J. O'Connell, Jr., *et al.* (representing the American Airlines pilot group) in response to the brief of the respondents in the above-captioned proceeding.

For the following reasons, we believe that the respondents' brief confirms the necessity of granting the petition.

1. Respondents concede (brief, pp. 10, 11, 12), as we contended in our petition, that the pilot group did not claim

to represent the flight engineers. Yet, the first ordering paragraph of the District Court's order (Jt. App. 51) enjoins precisely this conduct.

2. The District Court did not, as respondents state (brief, p. 11), find "the requirements of Sections 7 and 8 of the Norris-LaGuardia Act" satisfied, and we invite the Court's attention to the pages cited by the respondents, Record Volume III, 54b-55b. *At best* the District Court found that the flight engineers fulfilled the "settlement" requirements under Section 8 but certainly made *none* of the findings required by Section 7.

3. In the absence of any findings of wrongdoing by the lower courts, respondents rely on passing references to the course of negotiations after the flight engineers left the Joint Committee sessions. The facts are, even as they are shown by the respondents' brief, that the pilots continued bargaining on the basis of documents and concessions that had been won over the past months in concert with the flight engineers; these vitally affected pilots and the American pilot group was certainly not required to junk these gains when the flight engineers withdrew. The "agreements" of which the respondents complain insofar as they affected flight engineers were never signed or implemented, and there is no indication or finding that pilots intended to do so without the agreement of the flight engineer representatives. This had been the procedure with respect to the crew complement agreement of December 1, 1964 (R. 19b-20b). As the District Court points out, the agreement which the respondents discuss "was designed to be executed by Alpa, by the Chapter [respondents], and by the Company" (R. 41b).

Conclusion

By far, the largest portion of the respondents' brief replies to a separate petition (No. 455) by American Airlines. The pilots' petition and the Company's present different, serious and substantial questions. Certainly, respondents must have originally predicated their actions for injunctive relief against the carrier and the pilots' union on different grounds and different theories, for while the Railway Labor Act imposes certain duties of bargaining upon the carrier, it recognizes a *competition* of interest as between labor organizations. Yet, in order to sustain the decision against the pilots, the respondents have sought to confuse the responsibilities and duties of an employer with those of another union.

The respondents have not met with reason or authority a single point—including the vital Norris-LaGuardia jurisdictional question—raised by the pilots' petition. By involving the pilots in their litigious struggle with the Company, the respondents apparently seek to carve out, through an injunctive order, some future tactical advantage in the uncertain bargaining future that lies ahead of all unions in the airline industry. We can find no other reason for the flight engineers' persistent pursuit of judicial restrictions upon the pilots' union's freedom of action. We do not believe that the respondents have shown that the order of the District Court is rooted in past conduct or present necessity; it is supported by neither equity nor reason and flies directly in the face of the most plainly stated legislative requirements. Perhaps the most important consideration for this Court is the prospect that

such seriously misconceived decisions will breed increasing disorder in the application of the Norris-LaGuardia Act, the Railway Labor Act and the Federal Rules of Civil Procedure to the field of labor law litigation.

For the foregoing reasons, it is respectfully submitted that the petition for certiorari should be granted.

Respectfully submitted,

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